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In re Application of REVELL et al
U.S. Application No.: 09/673,139
Int. Application No.: PCT/GB99/01170
Int. Filing Date: 16 April 1999
Priority Date: 17 April 1998
Attorney Docket No.: 277860
For: BONE IMPLANT

DECISION

This is in response to applicants' "Renewed Petition Under 37 CFR 1.181" filed 03 October 2001.

BACKGROUND

On 16 April 1999, applicants filed international application PCT/GB99/01170, which claimed priority of an earlier United Kingdom application filed 17 April 1998. A copy of the international application was communicated to the USPTO from the International Bureau on 28 October 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 15 November 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 17 October 2000.

On 11 October 2000, applicants filed national stage papers in the United States. The submission was accompanied by, *inter alia*, authorization to charge the basic national fee required by 35 U.S.C. 371(c)(1).

On 03 November 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), indicating that an oath or declaration in compliance with 37 CFR 1.497 must be filed along with a surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty (30) months from the priority date.

On 12 June 2001, applicants filed a petition under 37 CFR 1.181 along with an executed declaration. The petition stated that applicants never received the Notification of Missing Requirements.

On 21 September 2001, this Office mailed a decision dismissing the 12 June 2001 petition on grounds of inadequate proof of applicants' purported nonreceipt of the Notification of Missing Requirements.

On 03 October 2001, applicants filed the present renewed petition.

DISCUSSION

According to the Official Gazette at 1156 OG 53 and MPEP 711.03(c), a petition to withdraw a holding of abandonment based on failure to receive an Office communication must include: (1) a statement by the practitioner that the Office communication was not received by the practitioner, (2) a statement by the practitioner that he searched the application file jacket and docket records and that the search indicates that the Office communication was not received, and (3) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

With regard to item (1) above, applicants' representative has provided the required statement.

With regard to item (2) above, applicants' representative has provided the required statement.

With regard to item (3) above, the renewed petition states that a docket record which lists responses due to the USPTO on 03 December 2000 and 04 December 2000 (03 December 2000 was a Sunday) for all cases handled by the representative's firm is unavailable due to technological constraints. The petition is accompanied by a copy of relevant portions of the mail log of the representative's firm. The copy of the mail log reflects the absence of any correspondence received from the USPTO relating to the present application. The evidence of record is sufficient to reasonably establish that the Notification of Missing Requirements mailed 03 November 2000 was never received by applicants.

CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.181 is GRANTED.

The application has an International Filing Date of 16 April 1999 and a date under 35 U.S.C. 371 of 12 June 2001.

The application will be forwarded to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision.

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